IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6476 OF 2005

Oriental Ship Agency Pvt. Ltd. & Ors. ... Petitioners.

Vs.

Kotak Mahindra Bank Ltd. & Ors. ...Respondents.

....

Mr. S.G. Aney, Senior Advocate, with Mr. R.S. Datar for the Petitioners.
Mr.V. R. Dhond & Ms.Meenakshi Mahashabde for the Respondents.

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CORAM : F.I REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

October 7, 2005.

P.C.

We have heard the Learned Counsel for the parties. The proceedings are pending before the Debts Recovery Tribunal. At the instance of Respondent No.1, an objection was raised on behalf of the Petitioners herein, that the Tribunal has no jurisdiction considering that it was not an actionable claim. That contention was rejected by the Learned Tribunal by its order dated 30th June 2005. An appeal preferred has also been rejected.

We have heard the Learned Counsel for the parties. The issue as to whether the Tribunal has jurisdiction in the subject matter is an issue which would require decision on merits, in other words, after enabling both the parties to lead evidence thereon. An issue will arise as to whether the expression 'debt' under the Recovery of Debt of Banks and Financial Institution, will have to be given the same meaning as in the Transfer of Property Act or whether an actionable claim as set out under the Transfer of Property Act can be said to be a debt under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. There may also be other issues. Considering that, in our opinion, the finding recorded by the Tribunal below is purely in the nature of preliminary finding and will not preclude the Tribunal after framing of issues including an issue as to whether the same amounts to debt and, thereafter decide the claim according to law. We make it clear that the Tribunal below will not be bound by the prima facie finding given by it and it would be open to the Tribunal after evidence is recorded to arrive at independent conclusion. We, further make it clear that considering the object of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Tribunal will decide all issues finally in accordance with

law.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)